

EX PARTE OR LATE FILED

A Partnership Including
Professional Corporations
1850 K Street, N.W.
Washington, DC 20006-2296
202-887-8000
Facsimile 202-778-8087

DOCKET FILE COPY ORIGINAL

Boston
Chicago
Los Angeles
Miami
Newport Beach
New York
St. Petersburg (Russia)
Vilnius (Lithuania)
Washington, D.C.

Associated
(Independent) Offices:
Barcelona London
Brussels Madrid
Lisbon Paris

MCDERMOTT, WILL & EMERY

Including the practice formerly carried on by Lee, Toomey & Kent

Carole C. Harris
Attorney at Law
202-778-8281

September 29, 1995

VIA HAND DELIVERY

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
SEP 29 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Amendment of Part 90 of the Commission's Rules to
Facilitate Future Development of SMR Systems in the
800 MHz Frequency Band and Implementation of
Section 309(j) of the Communications Act -
Competitive Bidding 800 MHz SMR; PR Docket
No. 93-144, PP Docket No. 93-253

WRITTEN EX PARTE PRESENTATION

Dear Sir/Madam:

We are submitting, on behalf of Pacific Gas and Electric Company, the attached ex parte presentation regarding the Commission's recent recommendations in the above-referenced dockets. This matter is being filed consistent with the recommendation of the Wireless Branch that such Comments be filed no later than September 29, 1995.

In accordance with Section 1.1206 of the Commission's rules, we are enclosing two copies of the ex parte presentation for inclusion in the record of the above-captioned proceed.

Very truly yours,

Carole C. Harris/jy

Carole C. Harris

Enclosures

No. of Copies rec'd 041
List A B C D E

Office of the Secretary
September 29, 1995
Page 2

cc: Chairman Reed Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Rosalind K. Allen

WASHINGTON, D.C. 20554

**WRITTEN EX PARTE PRESENTATION OF
PACIFIC GAS & ELECTRIC COMPANY**

I. STATEMENT OF INTEREST

1. PG&E is a utility which provides electricity and natural gas to a wide variety of customers across a

electrical power and natural gas operations serve residences, businesses and industry, public safety entities, hospitals, nursing homes, transportation facilities and sanitation facilities. PG&E's energy service affects virtually every aspect of daily life within its extensive service territory.

2. In an effort to provide its vital electrical power and natural gas services in a safer, more efficient fashion, PG&E is in the process of implementing an 800 MHz wide-area land mobile radio network providing coverage over most of its service territory. The system is used primarily for dispatch and coordination of field crews conducting build-out of facilities, inspection, maintenance and emergency response functions. The system permits efficient, organized allocation of field crews and equipment, which in turn assures a continuous, high level of safety and reliability in the delivery of power and natural gas.

3. In times of emergency power outages, PG&E's land mobile system is indispensable. Reliable communications facilitate the accurate, coordinated deployment of emergency response personnel, the rapid restoration of power and gas and maximize the safety of personnel performing the efforts to achieve this. This is a particularly important

consideration in PG&E's service territory which is subject to earthquakes, floods and mud slides.

4. As indicated, PG&E's implementation of its system is ongoing. PG&E anticipates that it may have need for further spectrum as demands on its wireless infrastructure increase.

5. PG&E wishes to comment on the FCC's recent recommendation concerning the manner in which the General Category channels are allocated. The Commission has recently proposed auctioning the General Category frequencies to SMR entities and small businesses. Under the proposal, incumbent holders of General Category authorizations would thereafter be prevented from modifying or expanding the parameters of their licenses and/or be forced to relocate. Finally, the Commission has articulated the possibility that slow growth authorizations may be limited or eliminated all together. The proposals set forth by the Commission have the potential to seriously compromise PG&E's ability to expand its 800 MHz system as internal operational and customer service demands increase. As set forth more fully below, PG&E strongly urges the Commission not to auction the General Category channels for SMR use.

II. DISCUSSION

6. PG&E certainly appreciates the policy objectives which the Commission is attempting to further in the instant rulemaking proceeding. PG&E is concerned, however, that the legitimate and important interests of utilities such as PG&E are being eclipsed by those of the SMR industry. PG&E, and similarly situated utilities, play an extremely significant role in modern daily life and the spectrum at issue in this proceeding is an integral part of the daily operations of these utilities. PG&E is concerned that the recommendations recently put forward by the Commission, if adopted, would seriously compromise the utility industry's ability to maintain sufficient spectrum to meet their customers' needs safely, reliably and economically.

A. Auction of the Upper 200 Channel SMR Block

7. The Commission has been considering auction of the upper 200-channel SMR spectrum block for some time. In apparent anticipation of this possibility, major SMR entities have engaged in the process of filing "blanket" applications seeking to license virtually every frequency in non-SMR categories. This is often undertaken by simply filing applications, without coordination, for every frequency in a given market, whether those frequencies are

already licensed or not. In PG&E's service territory, for example, Smart SMR has conducted massive filing for non-SMR category frequencies. This blanket filing of applications has tied up huge amounts of spectrum resulting in PG&E's inability to expand its system as its internal operational and customer service demands increase. PG&E has previously filed a letter of protest, dated July 25, 1995, with the Chief of the FCC's Land Mobile Branch concerning this massive filing. As of the date of this filing, PG&E's protest is pending.

8. PG&E suggests that, based upon the magnitude of the filings and the failure of the filing entities to follow procedural protocols such as coordination, it defies logic to suggest that the SMR entities intend to construct and load the systems applied for. The utility industry, on the other hand, is in the process of actually developing and using 800 MHz spectrum.

9. The practice of blanket licensing on the part of SMR's has resulted in an extraordinary pressure on non-SMR categories, upon which PG&E is dependent for spectrum to expand its system for operational and customer service use. PG&E urges the Commission that, in the event that the auction of the upper 200 channel block proceeds, countervailing measures must be implemented, including the

dismissal of wide-scale pending applications for the non-SMR category frequencies filed by SMR auction winners.

B. Auctioning of General Category Frequencies

10. The Commission has also proposed designating the 150 General Category frequencies for auction to SMR entities and small businesses. Under the Commission's proposal, incumbent General Category licensees who were not SMR auction winners would essentially be "locked down" or "grandfathered" and given no opportunity to expand or modify the parameters of their current authorizations or, possibly, be subject to mandatory relocation.

11. PG&E respectfully suggests that the Commission's proposals are unrealistic and unworkable. The implementation and maintenance of a wide area land mobile system is not a static endeavor; expansions and other modifications are an unavoidable necessity as system needs and customer demands change. The Commission's proposal to lock down incumbents in the General Category would effectively cripple entities such as PG&E who have integrated General Category channels into their wide area systems.

12. PG&E further submits that mandatory relocation is unworkable as well. The land mobile spectrum across PG&E's service territory is extraordinarily congested. It is inconceivable that incumbents could be relocated to other spectrum without a significant diminution in the quality and capacity of communications capabilities.

13. Accordingly, PG&E strongly urges the Commission not to adopt its proposed recommendations concerning the General Category.

C. Limitation on Slow Growth Implementation Schedules

14. The Commission is also considering a limitation on all extended implementation schedules to a maximum of two years or the remaining term on the schedule, whichever is less. The implementation of this proposal, PG&E submits, would work an extraordinary inequity upon those entities who are implementing their systems in accordance with a slow growth schedule of greater than two years in length. The implementation of these systems, undertaken in reliance upon the Commission's earlier approval, involves the expenditure of millions of dollars and significant time and resources. It is simply unrealistic to retroactively shorten these time frames and demand compliance at the risk of license revocation. This measure could have an extraordinary

negative impact on utilities, such as PG&E, and is unwarranted. PG&E respectfully urges the Commission not to adopt this proposal.

III. CONCLUSION

15. As previously indicated, PG&E is cognizant of the benefits of fostering some level of competition and free enterprise in the administration of spectrum. PG&E submits, however, that this objective must be weighed against the benefits of other important uses to which spectrum has traditionally been put. PG&E respectfully submits that the recommendations at issue go too far in the direction of fostering competition and pay too little heed to the other interests at stake. The utility industry is an extraordinarily important one in this country and the spectrum at issue in this proceeding is an integral part of modern utility operations. The proposed measures would significantly hinder utility access to 800 MHz spectrum with a concomitant effect on their continued ability to deliver electrical power and natural gas in a safe, efficient manner. PG&E further respectfully suggests that this would be an extraordinary inequity completely at odds with the spirit and intent of the provisions of the Communications Act.

WHEREFORE, THE PREMISES CONSIDERED, Pacific Gas & Electric Company hereby urges the Commission to consider these Comments and proceed in a manner consistent with the views discussed herein.

Respectfully submitted,

PACIFIC GAS & ELECTRIC COMPANY

By: 

Carole C. Harris
Christine M. Gill
Kirk S. Burgee
McDermott, Will & Emery
1850 K Street, N.W.
Suite 500
Washington, D.C. 20006
(202) 887-8000

Its Attorneys

Dated: September 29, 1995